IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1442 OF 2006

M/s.Atreya Promoters & Builders & Anr. ...Petitioners

Vs.

The State of Maharashtra & Ors. ...Respondents

Shri Subhash Jha for the Petitioners.
Shri U.V.Nikam, A.P.P. for the State.
Shri Shriram S.Kulkarni for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 18, 2006.

JUDGMENT:

1. Rule. Shri Kulkarni waives service for the second Respondent. The learned A.P.P. waives service for the first Respondent. The challenge in this Petition under Article 227 of the Constitution of India is to the order dated 14th June, 2006 passed by the learned Adhoc Additional Sessions Judge, Pune. The Petitioners are accused in a complaint filed under section 138 of the Negotiable Instruments Act, 1881 by the second Respondent. There is an order of conviction passed by the Trial Court which is challenged by the Petitioners by preferring Criminal Appeal No.374 of 2005. An Application was made by the Petitioners at Exhibit 13 for grant of bail which was allowed by the Sessions Court by order dated 31st December, 2005. Another Application was made at Exhibit 14 by the

Petitioners in the said Appeal praying for suspension of sentence. On 31st December, 2005, ad-interim order was passed on Application at Exhibit 14 granting stay till further orders. The said Application is not yet disposed of.

2. An Application was made by the second Respondent at Exhibit 18 before the Sessions Court contending that the Petitioners have not complied with order dated 31st December, 2005 passed below Exhibit 13 by furnishing necessary bail bonds. The impugned order dated 14th June, 2006 has been passed on Application at Exhibit 18 by which ad-interim order dated 31st December, 2005 passed below Application at Exhibit 14 has been revoked. Thus, ad-interim stay was revoked. By the said order non-bailable warrant was issued against the Petitioners.

3. Shri Jha, the learned Advocate appearing for the Petitioners submitted that within two weeks from today the Petitioners will comply with order dated 31st December, 2005 passed below Application Exhibit 13 by furnishing necessary bail bonds. He submitted that in view of the statement, the impugned order dated 14th June, 2006 may be set aside. Shri Kulkarni appearing

for the second Respondent/original complainant submitted that the Petitioners are not attending to the proceedings of the pending Appeal. He submitted that on 28th September, 2005 before the Trial Court, the Petitioners have filed the purshis stating therein that they were ready to pay to the complainant the cheque amount. He submitted that in view of the said purshis, there cannot be any unconditional order on Application at Exhibit 14.

4. I have considered the submissions. I have perused affidavit of one Shri H.R.Pagaria tendered today. He has tendered unconditional apology for instructing his Advocate to make an incorrect statement which is recorded in order dated 29th August, 2006. Apology tendered is accepted.

5. The order dated 14th June, 2006 below Application at Exhibit 18 has been passed essentially on the ground that there is non-compliance with the order passed on Application at Exhibit 13. Now the Petitioners have made a statement to furnish necessary bail bonds within a period of two weeks from today. The statement is accepted. In view of the said statement, order dated 14th June, 2006 deserves to be

quashed and set aside. So far as the submission of Shri Kulkarni is concerned regarding the purshis filed by the Petitioners before the Trial Court, necessary contention can be raised by the second Respondent in that behalf relying upon the purshis when Application at Exhibit 14 is heard by the Sessions Court. As of today, I am only restoring ad-interim order passed on Application at Exhibit 14. The said Application can be directed to be disposed of expeditiously.

6. Hence, Writ Petition is disposed of by passing following order:

(i) The Petitioners are directed to comply with order dated 31st December, 2005 passed by the Sessions Court below Exhibit 13 in Criminal Appeal No.374 of 2005 on or before 04th October, 2006.

(ii) If compliance is made by the Petitioners as aforesaid within the stipulated time, the order dated 14th June, 2006 passed by the Sessions Court on Application at Exhibit 18 will stand quashed and set aside. However, if compliance is not made by the Petitioners within the

stipulated time, the said order dated 14th June, 2006 will operate.

(iii) In the event the Petitioners comply with clause No.(i) above within the time stipulated by this court, ad-interim order dated 31st December, 2005 passed on Application at Exhibit 14 in Criminal Appeal No.374 of 2005 will stand restored. In such event, the learned Adhoc Additional Sessions Judge will decide the said Application at Exh.14 as expeditiously as possible and preferably on or before 10th November, 2006.

(iv) All contentions of the parties on merits of said Application are expressly kept open.

(v) Rule is partly made absolute in above terms with no orders as to costs.

(vi) Parties and concerned court to act upon an authenticated copy of this order.

JUDGE